



DEPARTMENT OF STATE

Washington, D.C. 20520

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October 12, 1982

MEMORANDUM

TO : IAEA IG

FROM : OES/NTS - Allen L. Sessoms, Acting *AS*

SUBJECT: IAEA Reassessment - Long Term Objectives

The attached paper, prepared in accordance with the instruction given at the October 4 meeting of the IAEA Reassessment IG, is a first attempt to identify and define the problems which must be addressed during the course of the reassessment of the U.S. relationship with the IAEA. It discusses both overall objectives and specific goals, and proposes certain concrete steps to assist in achieving those goals.

This paper does not treat in detail the question of specific near term remedies for the events at the General Conference or actions to underscore our serious concern which can be taken in the immediate future.

Any comments you have will be welcome. The next IG meeting is now scheduled for October 15 at 3:30 p.m.

Attachment:
As Stated

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The IAEA was formally established on 29 July 1957 as a result of a proposal made by President Eisenhower in his "Atoms for Peace" speech at the U.N. General Assembly in December 1953. It was established to pursue the following objectives, as stated in Article 2 of the Agency's Statute:

The Agency shall seek to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world. It shall ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose.

Membership in the Agency is open to all States, whether or not they are members of the UN.

It has been clear from the beginning that a balance between promotional and regulatory aspects of the IAEA's mandate would have to be maintained if the Agency was to be effective. In the early years safeguards were not considered to be a major function of the Agency. Nuclear energy was in its infancy and it was generally assumed that civil nuclear energy systems would not be misused. At that time much information on sensitive nuclear technologies, in particular reprocessing, was declassified by the U.S. and pursued by some advanced (FRG) and developing (Argentina) countries as a legitimate, potentially essential, part of the civil nuclear fuel cycle. For its part the U.S. encouraged work in these areas.

When the Treaty on the nonproliferation of Nuclear Weapons (NPT) entered into force on 5 March 1970, the IAEA's safeguards role was expanded. Until that time safeguards were generally applied at the request of the State concerned and only on facilities it voluntarily submitted. There were safeguards requirements that were accepted as conditions of supply for facilities and materials supplied to countries by the U.S., USSR and others, but no requirements existed on indigenously developed equipment, materials or technology or, in general, when the supplier did not require safeguards. Article 3 of the NPT required that all non-nuclear weapons states (NNWS) party accept IAEA safeguards on all source and fissionable materials in all peaceful nuclear activities. This both increased the

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responsibility of the Agency in the safeguards area and defined a two-tiered safeguards system; the difference between NPT and non-NPT type safeguards has become a major source of tension and political debate within the Agency.

The NPT required a rapidly expanding resource base from which the Agency could draw to apply effective safeguards. This rapid expansion led to concern on the part of some developing country members that the primary goal of the IAEA, to encourage and help foster the expanded use of nuclear energy for peaceful purposes, would be submerged by its safeguards function. About 10 years ago a financing formula was agreed that put almost all of the burden of safeguards on the industrialized countries, i.e., those that had significant nuclear programs. An informal agreement was also reached that safeguards and technical assistance should be in approximate balance. We, and the other Western countries agreed that, in order to get developing countries to accept effective safeguards, they would have to be assured of technical assistance.

This balance has become the sine qua non for the acceptance of safeguards in many developing countries and also a major source of contention within the Agency. It is projected that safeguards resources must grow rapidly in order to keep pace with the large number of new and more complicated nuclear facilities projected to come on line in the near future. Those who must pay the bill for this are not agreed that a concomitant increase in technical assistance is warranted.

The IAEA's safeguards system has become an essential component to both U.S. nonproliferation policy and nuclear commerce. It provides a vastly more efficient way of applying safeguards to U.S. exports than would be the case if we were forced to apply safeguards on a bilateral basis. It also assures that safeguards will, at least in general, be applied to exports from countries that do not have the means, or the desire, to apply bilateral safeguards. The acceptance of IAEA safeguards is attested to by the concern that is generally expressed when exports are made without those safeguards.

It is difficult to envision a replacement for the IAEA safeguards system that would afford the same coverage at comparable cost. A new international organization would engender more political posturing than the IAEA simply because its mandate would have to be defined and/or negotiated at a time when political stridency among the G-77 is a fact of international life.

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The problems posed by Israel and South Africa in international organizations is a manifestation of the political activism and frustration felt by a majority of the developing world when confronting the behavior of these two countries.

The Israeli question in the IAEA is further complicated by the fact that the Israeli attack on Iraq's reactor was generally agreed (including by the U.S.) to be of concern to the IAEA. The U.S. voted for a General Assembly resolution that called upon the IAEA to examine the consequences of this raid. Thus, an Israeli action external to the Agency's mandate was put squarely on the IAEA's agenda.

The sentiment in the Group of 77 goes further. A recent statement by a representative of the Government of Madagascar, whose key role in the rejection of Israeli credentials cannot be overlooked, is instructive.

Quoting a U.S. embassy cable (Antana 2425):

"Madagascar, like many other third world countries, is fed up and frustrated with Israeli behavior. GDRM (Government of the Democratic Republic of Madagascar) is a staunch supporter of the Palestinian cause and refuses to accept Israeli intransigence. (He) explained that a country like Madagascar has very limited weapons with which to strike at Israel. However, they do have membership in international organizations and opportunities provided thereby to attack Israel."

This attitude suggests that it is not possible to avoid unpredictable external factors from encroaching on IAEA deliberations. However, ways can and should be sought to reduce the chances that such factors will lead to events that could disrupt the workings of the Agency.

This paper will address only the longer term strategy for the U.S. to consider adopting toward the IAEA. Shorter term measures seeking "remedy" for what occurred in Vienna in September will be addressed in a separate paper. Naturally, short term actions and their results will affect whatever we try to accomplish over the longer term. Some measure of early satisfaction should permit us to focus on those fundamental changes we might decide to seek. It is worth mentioning a couple of the short term actions currently under consideration.

One is to call for a special Board of Governors meeting either during the reassessment process or shortly after it

is completed. Its primary would be to pass a resolution calling on the Agency's membership to agree to return to the original purposes of the Statute, to reaffirm the principle of universality of membership, and to avoid in the future extraneous issues not relevant to the Statute. We need to be very clear as to what we want to result from such a Board meeting, and also we would want to make sure, through consultations, that at least a majority of the Board would support our initiative. Otherwise, such a special meeting would risk being counterproductive.

Another short term option would be to seek reversal of the precedent of credentials rejection by requesting a ruling on its legality by the International Court of Justice. This may be problematic because there is no continuing effect of the General Conference action and so there may be no legal issue to adjudicate. However, this and other options are under active study.

The Problem

U.S. concerns about the ability of the IAEA to perform its tasks as given in the Statute in an effective manner are caused, in part, by factors that are common to all international organizations. The growing assertiveness of the (G-77) has intruded into the activities of even technically-oriented agencies. These organizations typically operate on the procedural structure of majority rule, with each member State having one vote. This structure causes difficulties in the IAEA context because of the tasks the Agency is called on to perform. The IAEA plays a vital role in the implementation of our nonproliferation policy which, in turn, provides an essential foundation for our international nuclear commerce. It is thus an important element in our national security system. No other international organization is relied upon by the U.S. in this manner.

The situation has been better in the Board of Governors, where members may be more temperate because of the more frequent contacts between Board members and the need for most to be elected to such positions. In this forum the business of the Agency is generally conducted in a responsible way even on issues that are politically charged. However, problems have been arising in the Board context as well.

The major problem is the increasing tendency of the IAEA to become bogged down in the consideration of political issues not germane to its mandate. There are three distinct categories of politically inspired events that are of concern. These are:

1. Conduct by Members or the Secretariat which transgresses Agency rules or UN legal principles (Israeli

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and South African credentials rejection; admission of the Council for Namibia; procedural ruling by IAEA Legal Director on Israeli credentials vote);

2. Conduct by Members which (although lawful) is destructive to the effective functioning of the Agency (pressure to expand the Board; Argentine questions of NPT versus non-NPT type safeguards; pressures to directly relate increases in safe-guards expenditures to increases in technical assistance; relaxed attitude of G-77 towards possible safeguards violations in G-77 countries; narrow interpretation of the obligation of member states to facilitate the application of safeguard);

3. Conduct by the Secretariat which tends to reduce the effectiveness of the Agency (refusal to stand up against conduct which undercuts the Statute; making appointments to key Secretariat positions based primarily on factors other than merit).

Objectives

Our major objective is to reduce or eliminate unacceptable politicization in the IAEA.

Another objective, which is closely coupled to the first and reflects the continuing U.S. priority in the IAEA, is to increase significantly the effectiveness of the IAEA safe-guards system.

Possible Options

The immediate trigger of the U.S. walkout from the General Conference, the rejection of Israel's credentials, falls into category 1. However, the bulk of our long term concern about the viability of the Agency derives from events which fall into categories 2 and 3.

Extraneous Political Controversy

It is clear that steps should be taken to reduce the impact of category 1 type events although it is almost certain that such events will occur in unpredictable and uncontrollable ways from time to time. However, it may be possible to constrain IAEA action by building into the proceedings of the Board and/or General Conference a screening mechanism that prevents these issues

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from reaching the Agenda. For example, such issues could be referred to a "Bureau" of the General Conference for a preliminary decision on germaneness. Another mechanism might be a "Rules Committee" comprised of a limited number of members which would issue preliminary rulings on the admissibility of an item on germaneness grounds, which could only be overridden by a 2/3 majority vote. Alternatively, the Secretariat might create an office of "Parliamentarian" with a similar screening function. These devices are all familiar in domestic legislative assemblies. It should be possible to reach agreement on something of this kind.

Erroneous rulings on departures from recognized UN practice, such as the faulty legal interpretation on voting procedures by the IAEA Legal Director, can be ameliorated by establishing a set of clearly defined appeal procedures to correct such errors. Also, the Board of Governors could provide explicit guidance on how it expects such procedural matters to be handled in future.

Political Issues Within IAEA's Mandate

The second category contains issues that, though politically inspired, fall within the competence of the Agency. There is no way to avoid debating these issues on their merits. Working with other sympathetic governments and the IAEA Secretariat, we should be able to prevent such matters from damaging the Agency to an unacceptable degree. Keeping as many of these debates within the Board of Governors should serve our interests.

This category contains the sensitive issue of the application of safeguards and the attitude of G-77 countries to their responsibilities vis-a-vie the safeguards system. (It should be noted that there are also problems in this regard on the part of some developed countries; this is discussed later.) This issue highlights the differing views between developed and developing countries on the primary purpose served by the Agency. It also brings into stark relief the balance that must be struck if safeguards are to be effective. Developing countries view the Agency primarily as a conduit for technical assistance and technology transfer. They also see it as a way of removing the politically untenable specter of bilateral (vice barely acceptable multilateral) controls over their nuclear energy programs. The extreme steps Mexico, for example, is willing to take to avoid even a bilateral agreement for cooperation in nuclear energy with the U.S. highlights G-77 concerns in this regard.

The majority, if not all, of the industrialized countries view safeguards as the paramount purpose of the IAEA. Technical assistance has come to be viewed as a necessary expense to get effective safeguards.

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Staffing

The staffing issue is a complicated one that merits some attention. Geographical distribution requirements for high level personnel appointments have been applied in a generally mechanical fashion (e.g., accepting uncritically the nominees proposed by individual nations, with little or no regard to competence). This has resulted in a diminution of competence in the Secretariat, to the detriment of effectiveness. To the extent possible promotions and appointments at the P-5 level or above should be based primarily on merit, within the general framework of geographical distribution. This will be difficult to implement. By most reasonable measures the G-77 is under-represented within upper Agency management. However, there are instances where incompetence is tolerated beyond all reasonable norms. The stakes in the Agency are high for the developed countries. Steps must be taken to ensure that the Agency remains responsive to our concerns through the continued appointment of the most qualified individuals to the critical Secretariat positions.

Cogent counter arguments can be made in favor of geographic distribution guidelines. Some sensitivity to geographic distribution must be maintained or the staffing distribution may become so skewed as to reduce Agency effectiveness. A case in point is U.S. representation in the Department of Safeguards. The U.S. presence in the Safeguards Department has, by U.S. policy, deliberately been kept at significantly less than the "maximum" 25% to which we are "entitled" based on our level of contributions. This may have to change if our interest are to be served. However, an increase in the number of U.S. nationals in Safeguards can be achieved without relying on arguments about quotas.

There is thus a delicate balancing act in which we must engage. Close coordination within and outside the Secretariat must be maintained if our objectives are to be attained.

Improving Safeguards

In the long term our key objective for the IAEA is to ensure the effective application of safeguards. The Agency is not now capable of meeting the projected challenges it will face over the next few years. Its ability at present to apply effective safeguards hinges on efforts, primarily by the U.S., to ensure that the necessary instruments and techniques are developed and made available to the Agency on a timely basis.

Complaints about the application of IAEA safeguards exists both among developing and developed countries. Though of somewhat different origin, they can both be destructive of Agency purposes.

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There are significant problems, both technical and legal, with the way the IAEA applies safeguards. In order to maximize its utility to the U.S., the IAEA must apply effective safeguards. Given current and probable future funding and manpower constraints, this will almost certainly require it to discriminate in the application of safeguards, putting more resources into sensitive facilities and into facilities and material in countries of proliferation concern.

Western Europe

A long term problem for the IAEA has been the definition of its rights to inspect facilities in EURATOM countries. The NPT requires the "full scope" application of IAEA safeguards in EURATOM NNWS. THE IAEA and the U.S. interpret this to mean that the Agency has the right to independently verify that nuclear materials in EURATOM are not misused. EURATOM applies safeguards of its own and its large inspectorate is considered by some member countries (the FRG and Belgium in particular) as serving the international inspection function. In their interpretation EURATOM should inspect, which by law the countries cannot avoid, and the IAEA should observe. They argue that to do otherwise would pose an unreasonable burden of inspection on them. They also argue that EURATOM countries pose no proliferation risk and that scarce IAEA resources would be better spent in countries of proliferation concern.

There is some merit in this argument since some 80% of all IAEA safeguards resources are spent in EURATOM, Japan and Canada. However, reducing the effort in EURATOM under pressure from EURATOM would be an extremely unfortunate and counterproductive precedent. Given this situation we may find our European allies receptive to the proposal that we work together to find ways to limit IAEA presence that will not pose a threat to the IAEA's ability to apply safeguards elsewhere.

There has also only been lukewarm support in EURATOM countries for efforts to improve IAEA safeguards. The U.S. program to improve IAEA safeguards was ground breaking in this regard. Over five years elapsed from its inception until the establishment of other such programs in IAEA member states. There are now several programs supported by Western European countries and Japan to improve safeguards. These are generally narrowly focused and have the proclivity of interest of the country concerned. There has been some motion away from parochialism in some programs during the past few months, but it has come only as a result of strong U.S. pressure. Further, steps

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must be taken to change the attitude among key Western nations that safeguards is a burden which they endure primarily because of U.S. pressure. They must be made to realize that without a credible, effective, IAEA safeguards system civil nuclear energy development and commerce would probably be confronted with insurmountable political hurdles.

Developing Countries

The G-77 seems to have agreed to make the most narrow interpretation possible of their obligations under safeguards agreements. We were told recently by the Koreans that the G-77 line is to do no more than is absolutely required in facility attachments. This poses severe problems for the Secretariat because many facility attachments are old and do not allow for evolutionary changes in a country's fuel cycle. It also requires that in negotiating new facility attachments the Secretariat anticipate all possible safeguards relevant changes in the fuel cycle that could occur in a country over the lifetime of a facility.

Another problem arises in the context of NPT versus non-NPT type safeguards. The G-77, most of who are NPT parties, have adopted a stance supportive of their non-NPT members to the detriment of safeguards and the NPT regime in general. In the long term this will lead to an unraveling of the entire nonproliferation regime unless steps are taken to reverse this trend. This is clearly politically motivated. It may stem from frustration on the part of the G-77 in dealing with the developed countries; it may also be a low cost (to them) way in the short term of showing G-77 solidarity.

Whatever the cause, steps must be taken in the IAEA context to remove opportunities for political debate on these issues to become major stumbling blocks to the application of effective safeguards. The process of doing this is perilous because it could lead to the reopening of fundamental agreements like INFCIRC/153 and INFCIRC/66, respectively, the generic NPT and non-NPT type safeguards agreements. Given this there are several possible options worth considering.

Possible Options

We could consider developing a formal (legally binding if necessary) instrument that defines the responsibilities of the Secretariat and the obligations of member states to include the automatic updating of facility attachments at two- to

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four-year intervals, depending on the type of facility in question. The current problems in the application of safeguards at KANUPP in Pakistan arise in part because of the outdated facility attachment on that reactor. The Pakistanis have used the limitations on the IAEA inherent in that document to prevent the Agency from taking reasonable steps towards improving safeguards. Similar situations may occur at other facilities in other countries. Getting agreement to begin negotiating such an instrument will be very difficult. However, in light of the Pakistan experience, member nations would have difficulty arguing against it.

A much less ambitious task, which could be accomplished by an agreement in the Board, would be to change the process by which the Secretariat, and countries, accept new procedures and techniques for routine use in the application of safeguards. It is now normal for up to 4 years to pass between an urgent Agency request for a certain type of instrument and the actual use of that instrument for routine inspections. This time period could be greatly reduced. A short term fix is necessary now if we are to make significant progress in improving the application of safeguards in sensitive facilities in the next five years.

In general, safeguards resources should be concentrated in sensitive facilities and in facilities in countries of proliferation concern. The level of safeguards resources applied in countries with advanced nuclear programs should not be in direct proportion to the size of their nuclear program. A larger ratio of manpower expended per facility should be used in countries with small nuclear programs (which includes those of most concern from a proliferation view point).

Given the projected increase in the number of facilities in advanced countries, and given the lag in the safeguards budget with respect to those increases, the Secretariat should be encouraged to develop a safeguarding formula which realistically takes into account the size and nature of a country's program. This will not be a simple task but something must be done if safeguards are to be applied effectively in sensitive facilities and in facilities in countries of concern.

Generally, the Department of Safeguards should be structured in a manner commensurate with its task. A U.S.-sponsored study was completed last year that made recommendations for changes in the management of the Department. Some of the proposed changes have already been adopted. In addition, upon becoming Director General, Blix proposed certain changes in the structure of the Department which he is now implementing. His proposed changes

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were almost universally decried by the Board at the time they were suggested as being insufficient in view of the problems that beset the Department. We should work with the allies and with Blix to define an appropriate structure for safeguards, if necessary, with the help of expert consultants, that will meet the needs of the Agency for the 1980's. For example, thought should be given to establishing a special cadre of inspectors who have specific expertise in the area of enrichment plant safeguards. These types of plants are particularly sensitive from a proliferation perspective. Concern has been expressed by enrichment technology holders that some restriction must be placed on the number and country of origin of inspectors that have access to their facilities. Such a cadre could cut across traditional IAEA geographic lines, have special status within the Safeguards Department and receive special screening and training. Although this in itself could cause problems, measures of some kind will have to be taken to address concerns related to sensitive technologies.

Finally, efforts to improve the technical aspects of safeguards should be expanded. More attention should be paid to facilities and processes using plutonium without decreasing current efforts in other important areas. Up until now the U.S. has been, and continues to be, the major source of expertise available to the Agency for safeguards improvements. Recently other countries (UK, Canada, FRG, Australia, Japan, USSR) have initiated programs modeled on ours, but they are small and usually fairly narrowly defined. IAEA Secretariat officials feel that without strong U.S. leadership and support even these safeguards improvements programs would cease. We must seek to have other key IAEA members recognize that taking the lead in improving safeguards is in their interest. This message has so far been lost on the vast majority of IAEA member countries, including those in Europe.

Near-Term Tactical Considerations

There are now clear indications that our major allies are taking our stance on the IAEA seriously. This has become manifested in their willingness to send a letter to Blix decrying the procedural errors made at the General Conference and noting, albeit obliquely, our broader concerns. For his part Blix has expressed recognition that his own behavior may have encouraged the vote to reject Israel's credentials.

Capitalizing on this growing awareness, we should work with our allies and the Secretariat to initiate steps to remedy the precedential problems growing from the credentials rejection by

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the end of October. Also by the end of October, we should agree to the broad outlines of elements we deem essential to reduce politicization in the Agency. We should then seek to reach agreement with key allies on a plan for improvement, taking as a guide our agreed elements. We should be prepared to modify our agenda to maximize agreement. During this process the Soviets should be consulted. However, given the likelihood that they will seek to gain advantage from the situation in the long term, we should not necessarily seek their agreement on the next steps.

Consultations should begin in early November with a view towards our returning to active participation in the Agency prior to the February Board meeting. This meeting is important since its main business will be an examination of the safeguards system. We must have sufficient time to prepare for this event.

Possible Outcomes

The preceding discussion does not go into great detail on the dynamics that must be changed in order to effect significant changes in the way the IAEA does business. Doubtless there will be resistance, even among sympathetic countries, to accepting changes under duress. Strong arguments can be made that many of the steps suggested here run the risk of causing more harm than good and should not be pursued for that reason. Any change will require support of at least a majority of the Board with a significant majority (over two-thirds) necessary if they are to be sustained by the General Conference.

In the near term, we can expect few substantive steps towards reform. Those that are taken will be halting at best. However, if a strong case can be made that reforms are necessary if the Agency is to continue to have the support of its members and the public at large, some significant changes, primarily in the safeguards area, can be anticipated within the next few years. Technical assistance funding will present a much more difficult issue to resolve satisfactorily.